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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,875	01/16/2004	Bernard S. Fritz	H0001956C1(1100.1149102)	8435
128	7590	08/23/2006	EXAMINER	
HONEYWELL INTERNATIONAL INC. 101 COLUMBIA ROAD P O BOX 2245 MORRISTOWN, NJ 07962-2245			PUNNOOSE, ROY M	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,875

Applicant(s)

FRITZ, BERNARD S.

Examiner

Roy M. Punnoose

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-12 is/are rejected.
- 7) ☒ Claim(s) 13-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/16/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Election

1. Applicant's election without traverse of claims 6-17 in the reply filed on June 15, 2006 is acknowledged. In the reply filed, the applicant has withdrawn claims 1-5. Currently claims 6-17 are pending in the application.

Claim Rejections - 35 USC § 101

2. The 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 6-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Claim 6 is rejected because it is claiming a non-tangible result. In claim 6, merely activating a linear array of light sources and receiving with a light detector would not appear to be sufficient to constitute a useful, concrete and tangible result, since the outcome of activating a linear array of light sources and receiving with a light detector has not been used in a disclosed practical application nor made available (in the claim) in such a manner that its usefulness in a disclosed practical application can be realized. See OG Notices: 22 November 2005, "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility".

5. Claims 7-11 are rejected for reasons similar to the reason for rejection of claim 6 above. For example, claim 11 is rejected because it is claiming a non-tangible result. In claim 11, merely determining a velocity of one or more particles would not appear to be sufficient to constitute a useful, concrete and tangible result, since the outcome of determining a velocity of one or more particles has not been used in a disclosed practical application nor made available

Art Unit: 2877

(in the claim) in such a manner that its usefulness in a disclosed practical application can be realized.

6. The applicant is requested to determine whether the claimed invention complies with the subject matter eligibility requirement of 35 U.S.C. Sec. 101, sentence 3, in the OG Notice from 22 November 2005, which states “In determining whether the claim is for a practical application, the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather that the final result achieved by the claimed invention is “useful, tangible, and concrete.”

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 6 and 12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 24-26 and 41-42 of U.S. Patent No. 6,549,275 B1.

Although the conflicting claims are not identical, they are not patentably distinct from each other

Art Unit: 2877

because all the limitations/features claimed in claims 6 and 12 are found in claims 24-26 and 41-42 of U.S. Patent No. 6,549,275 B1.

Allowable Subject Matter

9. Claims 6 and 12 would be allowable if amended to overcome the 35 U.S.C. 101 rejections above, and if a terminal disclaimer is filed to overcome the double patenting rejection(s).

10. Claim 6 would be allowable because none of the prior art documents teach a method for determining the scattering produced by one or more particles in a stream in a flow channel, comprising activating a linear array of light sources to provide a substantially constant light intensity across a width of the flow channel, and receiving with a light detector the substantially constant light intensity provided across the width of the flow channel by the linear array of light sources, in combination with the rest of the limitations of claim 6.

11. Claim 12 would be allowable because none of the prior art documents teach an apparatus for analyzing one or more particles in a stream in a flow channel, comprising a linear array of light sources for providing a substantially constant light intensity across a width of the flow channel, and a light detector for receiving the substantially constant light intensity across the width of the flow channel from the linear array of light sources, in combination with the rest of the limitations of claim 12.

12. Claims 7-11 and 13-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, or if the base claim is amended to overcome the 35 U.S.C. 101 rejection(s), if applicable, and the double patenting rejection(s) above.

13. Claims 7-11 and 13-17 would be allowable because the prior art of record, taken alone or in combination, fails to disclose or render obvious the respective features claimed in each of the above claims in combination with the rest of the limitations of the respective claims including the limitations of their parent claims.

Contact/Status Information

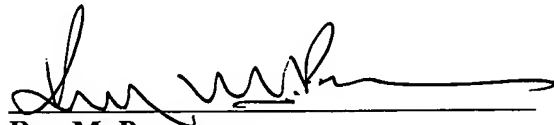
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**.

The examiner can normally be reached on 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 19, 2006


Roy M. Punnoose
Patent Examiner
Art Unit 2877